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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,242	02/12/2004	Michael R. Friton	005127.00180	2638
22907	7590	02/09/2006	EXAMINER	
BANNER & WITCOFF 1001 G STREET N W SUITE 1100 WASHINGTON, DC 20001			KAVANAUGH, JOHN T	
		ART UNIT	PAPER NUMBER	
		3728		

DATE MAILED: 02/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/776,242	FRITON, MICHAEL R.
	Examiner	Art Unit
	Ted Kavanaugh	3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 08 December 2005.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 7-23 and 30-37 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 7-23 and 30-37 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

1. The new figure 8, filed Dec. 8, 2005 is approved.

### ***Claim Rejections - 35 USC § 112***

2. The 35 USC 112, 1<sup>st</sup> paragraph rejection has been withdrawn in view of new figure 8 and applicants admission that "the terms 'braid' and 'braided' are well defined and well understood by those of ordinary skill in the art."

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 7-8,10,11,13-17,19,21-23,30-31,33-34,37 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 1382748 (Slasor) in view of US 6857204 (Davis et al).

Slasor teaches footwear comprising a closure system (10,25) that conforms over the footwear (see page 1, lines 78-85) as claimed except for the closure having mesh or braided panel. Davis teaches footwear being constructed out of mesh; see col. 5, lines 1-6. It would have been obvious to construct the closure system of Slasor out of mesh, as taught by Davis, to allow the footwear to breath.

Regarding the second closure system (shoe lace), Slasor teaches the device is worn over shoes or pumps; page 1, lines 8-14. The examiner takes official notice that it is well known and conventional in the art for shoes to having a closure system comprising of shoe laces and eyelets. This shoe lace system serves as the secondary closure system (shoe lace) as claimed.

5. Claims 9,12,18,20,25,32,35-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over the reference(s) as applied to the claims above, and further in view of US 6532687 (Towns et al).

Towns teaches a magnetic fastener arrangement for straps on footwear. It would have been obvious to provide the strap (25) of the footwear as taught above with a magnetic fastener arrangement, as taught by Towns, to further secure and adjust the strap to the footwear.

#### ***Response to Arguments***

6. Applicant's arguments filed Dec. 8, 2005 have been fully considered but they are not persuasive.

Applicant argues that elements 10 and/or 25 of Slasor do not teach a closure system, "rather, element 10 in Slasor constitutes a protective member for a shoe, and element 25 is an elastic strap that holds the cover member to the shoe".

In response, the examiner does not understand applicant's argument inasmuch as the closure member (120 with securing device 24) of applicant could of easily have been called a "protective member" and "strap". They have the same structure as claimed, the only difference is what they are labeled. Moreover, the wearer of the shoe

as taught above could not be removed from the without removal of the member 10 and strap 25 and therefore they are a "closure system".

Applicant argues that "While Davis generally describes footwear including mesh material, notably the closure system of Davis is not construed to include a mesh or braided panel as described in Applicant's claim 7 and 16."

In response, Davis is not be relied upon as a teaching of a closure inasmuch as Slasor teaches the closure system but instead, as applicant correctly points out, is being used as a teaching in general of footwear including mesh material.

Applicant argues that there is no motivation or suggestion for combining a shoe and eyelet type closure system with the system of Davis. "Quite to the contrary, Davis includes extensive closure teaching away from this Office proposed modification by describing how the closure system is a substitute and replacement for conventional laces".

In response, Davis is not being relied upon for its teaching of a closure system. Slasor is the base reference and as noted in the rejection above, Slasor teaches the device is worn over **shoes** or pumps; page 1, lines 8-14. The examiner takes official notice that it is well known and conventional in the art for shoes to having a closure system comprising of shoe laces and eyelets.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Conclusion***

**8. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including:**

**-“The reply must present arguments pointing out the *specific* distinctions believed to render the claims, including any newly presented claims, patentable over any applied references.”**

**--“A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section.”**

**-Moreover, “The prompt development of a clear issue requires that the replies of the applicant meet the objections to and rejections of the claims. Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06” MPEP 714.02. The “disclosure” includes the claims, the specification and the drawings.**

9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Other useful information can be obtained at the PTO Home Page at [www.uspto.gov](http://www.uspto.gov).

In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at (571) 273-8300 (**FORMAL FAXES ONLY**). Please identify Examiner Ted Kavanaugh of Art Unit 3728 at the top of your cover sheet.

Any inquiry concerning the MERITS of this examination from the examiner should be directed to **Ted Kavanaugh whose telephone number is (571) 272-4556**. The examiner can normally be reached from 6AM - 4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562.



Ted Kavanaugh  
Primary Examiner  
Art Unit 3728

TK  
February 6, 2006